

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

v.

HOUSTON NATHANIEL, III,
Defendant/Movant.

Case No. 12-cr-00574-PJH-2

**ORDER PROVIDING NOTICE OF
PENDING § 2255 MOTION TO
FEDERAL PUBLIC DEFENDER
PURSUANT TO MISCELLANEOUS
ORDER 2019.08.05; VACATING
DEADLINE FOR DEFENDANT TO
FILE REPLY BRIEF**

Pending before the court is the pro se motion under 28 U.S.C. § 2255 filed by defendant Houston Nathaniel, III. After the government filed its response brief on August 16, 2019, the Ninth Circuit issued a published decision in *United States v. Begay*, -- F.3d ---, 2019 WL 3884261 (9th Cir. Aug. 19, 2019), applying *United States v. Davis*, 139 S.Ct. 2319, 2336 (2019) (declaring that the residual clause of 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague) and holding that second-degree murder under the federal statute does not constitute a crime of violence under the elements clause of 18 U.S.C. § 924(c)(3)(A) because it can be committed recklessly. Pursuant to Miscellaneous Order 2019.08.05, the court hereby NOTIFIES the Office of the Federal Public Defender ("FPD") of the pending § 2255 motion for the limited purpose of determining whether defendant may seek relief under *Davis*, in light of recent Ninth Circuit authority in *Begay*.

The government has sought an extension of time for defendant to file a reply, due to the government's late service of its response brief on defendant. Dkt. no. 478. Pending the FPD's review of defendant's claims for relief under *Davis*, and in the

1 interests of justice and the efficient use of judicial resources, the court VACATES the
2 September 20, 2019, deadline for Nathaniel to file a reply brief in support of his pending
3 § 2255 motion, in order to allow Nathaniel the opportunity to present all his claims for
4 relief in this § 2255 proceeding and to avoid the restrictions on filing "second or
5 successive" § 2255 motions. See 28 U.S.C. § 2255(h). Under Miscellaneous Order
6 2019.08.05, the FPD will notify the court within 21 days of this order of its decision
7 whether to assume representation on defendant's claims for relief under *Davis*. After the
8 FPD files this notification, the court will issue an order setting new briefing deadlines.

9 **IT IS SO ORDERED.**

10 Dated: August 26, 2019



PHYLLIS J. HAMILTON
United States District Judge